

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SAN JOSE AMENDING TITLE 14 OF THE SAN JOSE
MUNICIPAL CODE TO ADD A NEW CHAPTER 14.34 IN
ORDER TO ADOPT A HOUSING IMPACT FEE**

WHEREAS, the City Council of the City of San José ("Council") has a long established policy and practice of recognizing the need to facilitate the availability of housing products at different levels of affordability in order to address the housing needs of the entire community; and

WHEREAS, the Council desires to adopt a fee to help address the increased need for affordable housing connected with the development of new market rate residential rental units ("Housing Impact Fee"); and

WHEREAS, the Council has caused a study to be prepared that analyzes whether there is a reasonable relationship between the development of new market rate residential rental units and the need to increase the supply of new affordable housing; and

WHEREAS, that study, prepared by Keyser Marston and Associates, entitled "Residential Nexus Analysis" dated October 2014, (the "Nexus Study"), demonstrates that such a nexus exists, and that the use of a Housing Impact Fee for the purpose of increasing the supply of affordable housing in the City of San José ("City"), is justified; and

WHEREAS, the Council has determined that the Housing Impact Fee should be established consistent with the requirements applicable to fees for public facilities in California Government Code Section 66000 *et seq.*, commonly referred to as the "Mitigation Fee Act" without determining that it is required to do so; and

WHEREAS, the Council has, consistent with the Mitigation Fee Act, published twice in ten day period advance notice of the public hearing concerning the Housing Impact Fee and during that period made available for public review and comment data indicating the estimated cost required to provide the Housing Facilities described in this Ordinance and the potential revenue sources; and

WHEREAS, the Council has determined that the Housing Impact Fee is consistent with and implements the goals and objectives of the City's General Plan entitled "Envision San José 2040"; and

WHEREAS, the Housing Impact Fee is intended to create a funding mechanism to increase the supply of affordable housing in San José without reference to a specific development or property, although exemplar affordable housing developments are described in the expenditure plan accepted by City Council in connection with this Ordinance ("Expenditure Plan"); and

WHEREAS, the City will not expend funds from the Housing Impact Fee on any specific development prior to the completion of environmental review for such specific development, thus the adoption of this Ordinance is not a project under the California Environmental Quality Act guidelines found in Title 14 of the California Code of Regulations at Section 15378(b)(4); and

WHEREAS, the Housing Impact Fee is authorized pursuant to Section 200 of the City Charter and Section 7, Article XI of the California Constitution as a police powers measure to improve the public welfare of the City of San José;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 14 of the San José Municipal Code is amended to add a new chapter, to be numbered, entitled and to read as follows:

**CHAPTER 14.34
HOUSING IMPACT FEE REQUIREMENTS**

14.34.010 Findings and Determinations

The City Council has found and determined, based on the evidence presented in the Nexus Study, the staff memorandum submitted for the November 18, 2014 meeting and its attachments, and in other information and testimony presented at the public hearing that:

- A. The Housing Impact Fee is consistent with the adopted goals and polices contained in the City's General Plan, including the following policies and goals: H-1.2, H-1.6, H-1.9, H-2, H-2.1, H-2.8, H-2.11, H-3.3 and H-4.2.
- B. The Housing Impact Fee is also consistent with the proposed goals presented in the text amendments to the General Plan that the City Council will consider on December 9, 2014 including revised goals H-1.10 and H-2.8 and the revision to goal H-2 to read as follows "Preserve and improve San Jose's existing affordable housing stock and increase its supply such that 15% of all new housing stock developed is affordable to low-, very low-, and extremely low-income households."
- C. As specified in this proposed Goal H-2, it is in the interest of public welfare, health and safety that at least fifteen percent (15%) of new residential dwelling units be affordable units. As discussed in the Expenditure Plan, the Housing Impact Fee, once it is fully operational, is intended to help fund up to 234 affordable units per year, which could be as much as 5-6% of the 3986 new units

projected to be constructed each year by the City's regional housing needs assessment. This proposed General Plan goal that at least fifteen percent (15%) of new residential dwelling units be affordable units also establishes a reasonable relationship between the need for and use of a Housing Impact Fee to address the increased demand for new affordable housing and new market rate residential rental developments.

- D. The purpose of the Housing Impact Fee is to provide funding to the City to increase the supply of affordable housing units by acquiring Housing Facilities and financing development of affordable housing and acquiring affordability covenants in exchange for that financing.
- E. The Nexus Study and the Expenditure Plan establish a reasonable relationship between the use of the Housing Impact Fee to create affordable housing to address the increased demand for new affordable housing and new market rate residential rental developments. There is a reasonable relationship because new market rate residential rental development leads to new residents and the spending by these new residents leads to an increase in jobs, and due to the increase in jobs, new housing will be needed, including new housing affordable to extremely low, very low, low, and moderate income households, which the Housing Impact Fee is intended to help provide by funding the construction of affordable housing and the acquisition of affordability covenants.
- F. The Nexus Study also establishes a reasonable relationship between the need for affordable housing units and new market rate rental residential development. This is so because new market rate residential rental development leads to a net increase in new residents, and the increase in goods and services required by these new residents leads to an increase in job creation in the City including jobs in the service and retail sectors (e.g., teachers, restaurant workers; pet care; maintenance workers, etc.) with wages that will not allow these workers to obtain market rate housing. This results in an increase in the need for new housing

- affordable to extremely low, very low, low, and moderate income households, which the Housing Impact Fee will be used to help provide.
- G. There is no excess surplus of affordable housing; according to the City's regional housing needs assessment there is a current shortage of adequate, affordable housing estimated at 16,315 units as of December 31, 2013.
- H. State housing policy, as expressed in California Government Code Section 65583(c), requires the City to assist in the development of adequate housing to meet the needs of low and moderate income households. The City's Housing Element details a significant shortage of housing affordable to low and moderate income households, which will only increase as the finite number of residentially zoned lots within the City are purchased and developed for market rate residential developments. This loss of residential land available for affordable housing is another impact of market rate residential rental development and since the majority of market rate residential development in the City is rental development.
- I. The Housing Impact Fee will assist in reducing potential negative impacts on the environment because if the increased demand for affordable housing is not addressed within San José it will cause such housing to be built elsewhere, in areas with lower land values that are far from City employment centers and transit corridors, and the resulting commuting will cause increased traffic and transit demands and consequent noise and air pollution. Lack of affordable housing may also mean that businesses within the City will find it more difficult to attract and retain the variety of workers that they need.
- J. Adoption of the Housing Impact Fee may, at times, make market rate rental housing more expensive, but in weighing all of the factors, the Council has determined that the community's interests are best served by the adoption of this Chapter.

14.34.030 Purpose

The purpose of this Chapter is to:

- A. Implement the goals and objectives of the City's General Plan, including the City's Housing Element and the underlying State housing policies and mitigate the demand for affordable, safe housing units connected with the development of new market rate residential rental housing within the City.
- B. Facilitate the development and availability of housing affordable to a broad range of households with varying incomes within the City as mandated by California Government Code Section 65580 *et seq.*
- C. Facilitate compliance with the proposed General Plan goal to make at least 15% of new housing affordable.
- D. Facilitate compliance with the proposed General Plan goal to provide safe, affordable housing for workers in resident-serving industries.
- E. Address the demand for affordable housing generated by increased spending for goods and services associated with new market rate residential rental housing in the City and reduce the potential impacts on the environment by enabling the provision of such affordable housing in the City.

14.34.040 Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Chapter:

- A. "Affordable Housing Development" shall mean a Rental Development where a 100% of the Rental Units are Affordable Rental Units.
- B. "Affordable Rent" means a monthly rent that does not exceed one-twelfth of 30% of 60% of the Area Median Income at a level appropriate for the Assumed Household Size.
- C. "Affordable Rental Unit" shall mean a dwelling unit restricted to Affordable Rent by a Recorded Covenant and shall be deemed to include any manager's unit for an Affordable Housing Development which is required by State law.

- D. "Applicant" or "Developer" means a person, persons, or entity that applies for a development permit for a Residential Development and also includes the owner or owners of the property if the Applicant does not own the property on which development is proposed.
- E. "Area Median Income" or "AMI" means the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of San José in the event that such median income figures are no longer published periodically in the California Code of Regulations.
- F. "Assumed Household Size" means, for any dwelling unit, the household size assumed for determining Affordable Rent based on a Recorded Covenant which shall be either (a) 1 person for each bedroom plus 1 person for the unit, or (b) 1.5 persons for each bedroom.
- G. "Building Permit" means a City issued building permit and includes full structural building permits as well as partial permits such as foundation-only permits.
- H. "City" means the City of San José.
- I. "Certificate of Occupancy" means the permit issued by the City Building Division authorizing the initial occupancy of one or more buildings with residential dwelling units and includes temporary certificates of occupancy permits.
- J. "Conditional Use Permit" shall have the meaning given in San José Municipal Code Chapter 20.100.
- K. "Development Permit" shall have the meaning given in subsection C of Section 14.34.060.
- L. "Director" means the Director of Housing or such other director designated by the city manager to administer this Chapter.
- M. "Dwelling Unit" means a building, or portion of a building, planned or designed for use as a residence for one family only, living independently of other families or persons, and having its own bathroom and housekeeping facilities included in

said unit (e.g., each dwelling unit in a two-family dwelling, and each dwelling unit in a multiple dwelling).

- N. "Downtown High Rise" means a Residential Development located in the Downtown Core Area (as described in Resolution Number 73587 adopted January 9, 2007) where the highest occupied floor has a floor level elevation is at least 150 feet above street level.
- O. "Expenditure Plan" means the expenditure plan accepted by the Council at the time of adoption of this Chapter and successive adopted expenditure plans and amendments thereto.
- P. "Housing Facility" means (a) property acquired or proposed for acquisition by the City for affordable housing purposes and any improvements constructed thereon or (b) a recorded affordability restriction that is made for the benefit of and enforceable by the City.
- Q. "Housing Impact Fee" means the fee established by the City pursuant to this Chapter.
- R. "Housing Impact Fee Fund" means the fund established in Section 14.34.100.
- S. "Inclusionary Housing Policy" means the policy originally adopted by the City Council on October 4, 1988, by Resolution No. 60918, as amended, implementing Section 33413 of the California Health and Safety Code's requirement that a certain percentage of dwelling units developed in redevelopment project areas be available at affordable housing costs to persons and families of low or moderate incomes.
- T. "Market Rate Rental Unit" means a Rental Unit that is not an Affordable Rental Unit or a Reconstructed Unit.
- U. "Nexus Study" means the Nexus Study entitled, Residential Nexus Analysis, and dated October 2014, that is maintained for public review in the Department of Housing or any subsequent nexus study approved by the City Council.

- V. "Pipeline Application" means a Housing Impact Fee pipeline application for a residential development listing the qualifying City permit, the property description, address, and the number of all Market Rate Units in the residential development.
- W. "Planned Development Permit" shall have the meaning given in San José Municipal Code Chapter 20.100.
- X. "Reconstructed Unit" means a dwelling unit that replaces a dwelling unit that was located on the same parcel and was occupied no more than five (5) years prior to the building permit application.
- Y. "Recorded Covenant" means a recorded affordability restriction with a term of at least 55 years that limits the rental of the dwelling units to households with an income not exceeding 60% of the Area Median Income at Affordable Rent and is made for the benefit of and enforceable by the City, Santa Clara County or a State or Federal Agency.
- Z. "Rental Development" means a Residential Development that includes a multiple dwelling as defined in San Jose Municipal Code Section 20.200.340.
- AA. "Rental Unit" means a dwelling unit in a Rental Development.
- BB. "Residential" means any use of land specified as a residential use in Title 20 of this Code.
- CC. "Residential Development" means any development project, or portion thereof, that creates dwelling units.
- DD. "Schedule of Fees" shall have the meaning given in Section 14.34.050.
- EE. "Site Development Permit" shall have the meaning given in San José Municipal Code Chapter 20.100.
- FF. "Special Use Permit" shall have the meaning given in San José Municipal Code, Chapter 20.100.

14.34.050 Schedule of Fees; Inflation Adjustment

- A. The Housing Impact Fee is hereby established and the amount of such fee imposed shall be pursuant to the Schedule of Fees.

- B. The Housing Impact Fee(s) are listed in the table below ("Schedule of Fees ") by development type.

Development type	For each Market Rate Unit as of July 1, 2016
1. Rental Development	\$17.00 per square foot of floor area
2. Downtown High Rise Rental Development	\$17.00 per square foot of floor area
3. The Housing Impact Fee shall be reduced, based on the findings in the staff report, to \$8.50 per square foot as of July 1, 2016 for Downtown High Rise Rental Developments that obtain building permits and pay the Housing Impact Fee prior to the issuance of the building permit for the 3564 th Downtown Unit (the "Fee Reduction"). For the purposes of this Fee Reduction, a Downtown Unit means Dwelling Unit located in the Downtown Growth Area (as described in the General Plan) that was issued a building permit after February 1, 2007. After the issuance of the building permit for the 3564 th Downtown Unit, the Fee Reduction shall expire.	
4. Fees shall be assessed for each Market Rate Rental Unit on the basis the square feet inside the dwelling unit. Fees will not be charged for areas outside of the dwelling units such as common areas or corridors. Floor area shall be measured from the outside surface of the exterior stud walls and shall include all finished living space, but will not include unheated unenclosed spaces such as balconies, patios, unfinished garages or outside storage lockers. This will typically be the unit size an architect shows on building plans.	

5. To address inflation in the costs of developing affordable housing, the fee or fees in this Section shall be increased annually by 2.4% each successive July 1.

14.34.060 Application of Chapter; Payment

- A. The Housing Impact Fee shall apply to all Rental Developments. Nothing in this resolution shall restrict the ability of the City to require dedication of land, payment of fees, or construction of improvements for needs other than, or in addition to, those described in this Chapter.
- B. The Housing Impact Fee shall be paid for each Market Rate Rental Unit, subject to the limitations set forth in this Chapter.
- C. No application for a rezoning, tentative map, parcel map, conditional use permit, special use permit, building permit or other entitlement (each a "Development Permit"), shall be approved without compliance with this Chapter. Compliance with this Chapter shall be a condition of approval of all Rental Developments, whether or not the condition is expressly included in the Development Permit.
- D. Except as otherwise provided in this Chapter, no building permit for a Rental Development shall be issued unless and until the Housing Impact Fee has been paid or, alternatively, the Applicant has provided evidence of either compliance with or exemption from the provisions of this Chapter.
- E. Failure to pay the Housing Impact Fee within the time specified under this Chapter shall result in the imposition of a late fee which shall be as provided in a future amendment to the resolution adopting the City's schedule of fees and charges. In addition, interest at the rate of one half of one percent (1-1/2%) per month, pro rata, on the total unpaid balance, including late payment fees, shall be assessed from the date the payment of the fees becomes delinquent until the date that all past due amounts are paid to the City.

14.34.070 Appeal of Impact Fee Payment Timing

- A. An Applicant may, prior to the issuance of the Applicant's building permit, seek to delay payment of the Housing Impact Fees until the earlier of issuance of the Certificate of Occupancy or date of the final inspection of the Applicant's Residential Development by filing a written appeal with the Director.
- B. The exclusive grounds for granting an Applicant's appeal to delay payment of Housing Impact Fees shall be as follows:
 - 1. The City has not established a Housing Impact Fee Fund or account, collected funds, authorized expenditure of Housing Impact Fee revenues on one or more specific Housing Facilities, and adopted a proposed construction plan or schedule for specific Housing Facilities.
 - 2. The Housing Impact Fees are not intended to reimburse the City for expenditures that were previously made.
- C. Within ten (10) business days of receipt of the Applicant's request for delay of payment, the Director shall issue a written response to either uphold or deny the applicant's request for delayed payment of the Housing Impact Fees for the Applicant's Residential Development. The decision of the Director shall be final.
- D. An appeal of the timing of the Housing Impact Fees submitted after payment of the Housing Impact Fees shall be deemed untimely and shall not be considered.

14.34.080 Agreement for Delayed Impact Fee

- A. In the event that the Director determines to uphold the Applicant's request for delay of payment, the Applicant shall enter into an agreement for the delayed payment of the Housing Impact Fees as a condition of issuance of the Applicant's building permit(s).
- B. The delayed payment agreement shall be recorded in the Office of the Santa Clara County Recorder and shall require the Applicant or the applicant's successor to pay the Housing Impact Fees for the Applicant's Residential

Development, in full, no later than the date on which final inspection of the first dwelling unit within Applicant's Residential Development occurs.

- C. The delayed payment agreement shall have attached as an exhibit a legal description of the real property on which the Applicant's Residential Development is to be built. The Applicant shall be responsible for providing the legal description to the city at the Applicant's sole cost.

14.34.090 Pipeline Process

The deadlines and requirements for the pipeline exemptions from the Housing Impact Fee (the "Pipeline Process") are set forth below.

- A. An Applicant's Rental Development will be eligible for the Pipeline Process (an "Eligible Pipeline Project") if: (1) the Applicant has obtained one or more of the following unexpired City permits: Planned Development Permit, Conditional Use Permit, Site Development Permit, or Special Use Permit no later than June 30, 2016 and (2) the Applicant fully completes a valid Pipeline Application to the satisfaction of the City and pays any established City administration, monitoring and processing fees for the Pipeline Process by June 30, 2016.
- B. Within 30 business days of receipt of a Pipeline Application City will provide notice by email of the completion of a Pipeline Application or a list of missing or incomplete items, however the failure of the Applicant to receive such notice shall not extend the June 30, 2016 deadline.
- C. An Applicant with an Eligible Pipeline Project who paid the Housing Impact Fee at building permit issuance for all of its Market Rate Units will be entitled to a refund if the Applicant obtains a Certificate of Occupancy for the building(s) that include no less than 50% of the Market Rate Units by January 31, 2020.
- D. If the Applicant with an Eligible Pipeline Project who entered into an agreement at building permit issuance to pay the Housing Impact Fee at Certificate of Occupancy will be entitled to a waiver for all of its Market Rate Units if it obtains

- a Certificate of Occupancy for the building(s) that include no less than 50% of the Market Rate Units by January 31, 2020.
- E. There will be no refunds or waivers for Eligible Pipeline Projects that fail to obtain a Certificate of Occupancy for the building(s) that include no less than 50% of the Market Rate Units by January 31, 2020.
- F. The administration, monitoring and processing fees for the Pipeline Process shall be as provided in a future amendment to the Chapter adopting the City's schedule of fees and charges. This fee shall include a base charge due upon the filing of the Pipeline Application that will cover the initial application review and the issuance of a letter stating that the application is complete, review of the application for Certificate of Occupancy and the issuance of a pipeline certificate described in this Section and an hourly charge that shall apply in the event that additional staff review, preparation of a letter listing missing items, or other communications are needed.

14.34.100 Accounting and Use of Housing Impact Fees

- A. There is hereby established a Housing Impact Fee Fund. All Housing Impact Fees shall be deposited into the Housing Impact Fee Fund.
- B. Any repayments of loans made from Housing Impact Fees shall be deposited into the Housing Impact Fee Fund.
- C. The Housing Impact Fee Fund, including accrued interest, shall be subject to the all of the applicable provisions of the Mitigation Fee Act, including but not limited to the requirements for accounting, reporting and expenditure of the fund to increase the supply of affordable housing in San José.
- D. The Housing Impact Fee shall be used, consistent with the Expenditure Plan, as amended from time to time, to increase the supply of affordable housing in the City, including acquisition, financing, construction, and development of Housing Facilities, and any necessary and reasonable costs for administering the Housing Impact Fee Fund.

14.34.110 Effective Date; Initial Collection Date for Fees

- A. Consistent with California Government Code Section 66017, this Chapter shall be effective sixty (60) days after adoption.
- B. Payment of the Housing Impact Fee shall be added as a condition of approval to Development Permits after the effective date.
- C. Notwithstanding subsection B of Section 14.34.110, no Housing Impact Fee shall be due for any building that obtains its final Certificate of Occupancy on or prior to June 30, 2016.

14.34.120 Waiver

- A. Notwithstanding any other provision in this Chapter, the requirements to pay the Housing Impact Fee may be waived, adjusted or reduced if an Applicant shows based on substantial evidence, that there is no reasonable relationship between the impact of the proposed Rental Development and the requirement to pay the Housing Impact Fee, or that applying the requirements of this Chapter would take property in violation of the United States Constitution or California Constitution.
- B. Notwithstanding any other provision in this Chapter, the requirement to pay the Housing Impact Fee shall be waived, adjusted or reduced to the extent an Applicant shows at, or prior to, the issuance of the Certificate of Occupancy for a Rental Development, the Applicant submits proof to the Director that either: (a) the Rental Development is located in a redevelopment project area and the requirements for For-Sale Units under the City's Inclusionary Housing Policy have been satisfied, or (b) the Rental Development is not located in a redevelopment project area and the Applicant has fulfilled all of requirements in state law and regulation to create a condominium, stock cooperative, or community apartment project and has conveyed at least one unit, or in the case of a stock cooperative, one share, to a bona fide purchaser for value in an arm's length transaction and evidence of the conveyance has been recorded.

- C. The Director shall review all submittals and requests under this Section. Within thirty (30) business days of receipt of the Applicant's submittals, the Director shall provide a written response regarding such request. The decision of the Director shall be final.

14.34.130 Miscellaneous

- A. The recitals above and the attached exhibits are hereby made a part of this Chapter.
- B. The findings and determinations made hereunder are based on the evidence in the record including the Nexus Study, the General Plan, this Chapter and the reports submitted by staff in connection with the approval of this Chapter.
- C. The Director may adopt such rules and regulations as are needed to implement the intent of this Chapter.
- D. If any section, subsection, sentence, clause, or phrase of any provision of this Chapter, including its attachments, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Chapter. Each and every section, subsection, sentence, clause or phrase of this Chapter, including its attachments, is severable from all other sections, subsections, sentences, clauses or phrases.

SECTION 2. Consistent with California Government Code Section 66017(a), this ordinance shall take effect on February 1, 2015.

PASSED FOR PUBLICATION of title this ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk